

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FRANK J. AVELLINO, et al.,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05421 (SMB)

**STIPULATION AND ORDER FOR BRIEFING SCHEDULE CONCERNING THE  
TRUSTEE'S MOTION TO REARGUE THE COURT'S ORDER GRANTING IN PART  
AND DENYING IN PART MOTION TO DISMISS**

WHEREAS, on January 28, 2015, numerous defendants in the above-referenced adversary proceeding filed a motion (Def.'s Mot. Dismiss, ECF Nos. 88-90) to dismiss all claims asserted against them in the Amended Complaint, filed on November, 24, 2014 (Am. Compl., ECF No. 86) (the "Motion to Dismiss"). The Motion to Dismiss was fully briefed on June 22, 2015 (Defs.' Reply Mem. Supp. Mot. Dismiss, ECF No. 101);

WHEREAS, on July 29, 2015, the Court conducted a hearing on the Motion to Dismiss at

which time the Court requested that the parties submit supplemental memoranda on the issue of whether the Trustee may recover fraudulent transfers made by BLMIS prior to its change in corporate form in 2001 from a sole proprietorship to a limited liability company (Hr'g Tr., ECF No. 106);

WHEREAS, on August 12, 2015, the Trustee, SIPC, and certain defendants filed letters to the Court on the above issue (ECF Nos. 102, 103, 104, respectively);

WHEREAS, the Court entered a Memorandum Decision Granting in Part and Denying in Part the Motion to Dismiss on July 21, 2016. *Picard v. Avellino et al. (In re Bernard L. Madoff Inv. Sec. LLC)*, Adv. No. 10-05421, 2016 WL 4040799, at \*1 (Bankr. S.D.N.Y. July 21, 2016) (the “July 21 Decision”);

WHEREAS, on August 5, 2016, the Court entered its Order Granting in Part and Denying in Part the Motion to Dismiss, incorporating the July 21 Decision (Mot. Dismiss Order, ECF No. 117) (the “August 5 Order”);

WHEREAS, the Trustee will move pursuant to Local Bankruptcy Rule 9023-1(a) to reargue the August 5 Order (the “Motion”); and

WHEREAS, the parties have conferred and agree to the briefing schedule set forth below.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned herein as follows:

1. The Trustee will file his Motion on or before Friday, August 19, 2016.
2. The Defendants will have up to and including September 19, 2016 to file a response.
3. The Trustee will have up to and including October 3, 2016 to file a reply.

4. The Trustee requests oral argument, but recognizes that, under Local Rule 9023-1(a), no oral argument shall be heard unless the Court grants the motion and specifically orders that the matter be reargued orally.

Dated: August 18, 2016  
New York, New York

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Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the estate of Bernard L. Madoff*

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*Attorneys for Defendants Identified on Exhibit B*

SO ORDERED:

Dated: August 18<sup>th</sup>, 2016  
New York, New York

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE